

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

ALFONSO VILLA LOERA, #1161229	§	
VS.	§	CIVIL ACTION NO. 4:09cv163
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Amos L. Mazzant, who issued a Report and Recommendation concluding that the above-styled and numbered petition for a writ of habeas corpus should be dismissed as time-barred. The Petitioner has filed objections.


The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit.

The Petitioner argued in his objections that he was actually innocent of the crime and that his claim of actual innocence was a gateway through which other barred claims may be considered on the merits. In *Herrera v. Collins*, 506 U.S. 390, 400 (1993), the Supreme Court held that a claim of actual innocence does not state an independent, substantive constitutional claim and was not a basis for federal habeas corpus relief. The Supreme Court added, however, that a claim of actual innocence is “a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.” *Id.* at 404; *Dowthitt v. Johnson*, 230 F.3d 733, 741 (5th Cir. 2000), *cert. denied*, 532 U.S. 915 (2001). The Fifth Circuit subsequently considered an actual innocence claim in the context of the one year statute of limitations and found that it did not

justify equitable tolling. *Cousin v. Lensing*, 310 F.3d 843, 849 (5th Cir. 2002). The Fifth Circuit held that the petitioner's "claims of innocence did not preclude the dismissal of his petition as untimely." *Id.* The Petitioner's objections provide no basis for relief in light of *Cousin v. Lensing*. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions by either party not previously ruled on are hereby **DENIED**.

**SIGNED this 16th day of June, 2009.**

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE